

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

<b>LINDY RAY MATTHEWS, # 504717,</b>	§	
	§	
Plaintiff,	§	
v.	§	Civil Action No. <b>3:05-CV-1408-L</b>
	§	
<b>WARDEN L.E. FLEMING, et al.,</b>	§	
	§	
Defendants.	§	

**ORDER**

Before the court is Plaintiff's Civil Rights Complaint, filed October 28, 2005. Pursuant to the judgment and mandate of the United States Court of Appeals for the Fifth Circuit ("Fifth Circuit"), this case was reopened on August 21, 2008, and on October 29, 2008, it was **recommitted** to United States Magistrate Judge **Wm. F. Sanderson, Jr.** for hearing, if necessary, and to submit to the court proposed findings and recommendations for disposition, in accordance with Special Order 3-251. On January 22, 2009, the Findings, Conclusions, and Recommendation of the United States Magistrate Judge ("Report") was filed. No objections to the Report have been filed.

This is a civil rights action brought by a *pro se* inmate pursuant to *Bivens*\* and 42 U.S.C. § 1983. Magistrate Judge Sanderson found the following:

1. Plaintiff abandoned all claims related to his fall at the Federal Medical Center in Fort Worth, Texas ("FMC Fort Worth"), on October 21, 2003;
2. With respect to his medical care claims, Plaintiff alleges no involvement on the part of Defendants L. Huber, J. Jaacks, H. Solise, John Does 1 and 2 from FMC Fort Worth, and the unidentified defendants from FCI Seagoville;

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\**Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971).

3. With respect to his medical care claims, Plaintiff pleaded facts that arguably support Defendant L. E. Fleming's personal involvement;
4. Plaintiff raises cognizable *Bivens* claims against Defendants L. E. Fleming, Paul Celestin, John Mills, Jose Gomez, and J. Capps; and
5. The court lacks jurisdiction over Plaintiff's negligence claims against Defendants Jose Gomez and J. Capps in their individual capacities.

The magistrate judge recommends that all claims related to the October 21, 2003 fall at FMC Fort Worth, all claims against Defendants L. Huber, J. Jaacks, H. Solise, John Does 1 and 2 from FMC Fort Worth, and any unidentified defendants from FCI Seagoville be dismissed as frivolous pursuant to Title 28 U.S.C. §§ 1915A(b) and 1915(e)(2)(B). He also recommends that Plaintiff's negligence claims against Defendants Jose Gomez and J. Capps be dismissed for lack of subject matter jurisdiction. The magistrate judge further recommends that process be issued on Plaintiff's medical care claims under *Bivens* against Defendants L.E. Fleming, Paul Celestin, John Mills, Jose Gomez, and J. Capps, in their individual capacities.

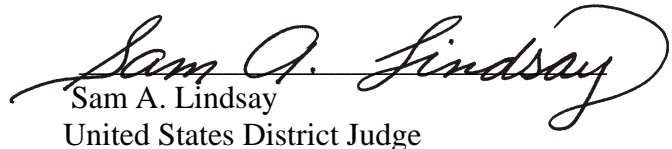
Having reviewed the complaint, supplemental questionnaire, record, and the Report in this case, the court determines that the findings and conclusions are correct. The magistrate judge's findings and conclusions are therefore **accepted** as those of the court. The court therefore (i) **dismisses with prejudice** all claims related to the October 21, 2003 fall at FMC Fort Worth, all claims against Defendants L. Huber, J. Jaacks, H. Solise, John Does 1 and 2 from FMC Fort Worth, and any unidentified defendants from FCI Seagoville as frivolous pursuant to 28 U.S.C. §§ 1915A(b) and 1915(e)(2), (ii) **orders** service of process to be issued on Plaintiff's medical care claims under *Bivens* against Defendants L.E. Fleming, Paul Celestin, John Mills, Jose Gomez, and

J. Capps, in their individual capacities, and (iii) **dismisses without prejudice** Plaintiff's negligence claims against Defendants Jose Gomez and J. Capps for lack of subject matter jurisdiction.

Because Plaintiff was previously granted leave to proceed *in forma pauperis*, the clerk of the court is **directed** to prepare and issue summonses for Defendants L.E. Fleming, Paul Celestin, John Mills, Jose Gomez, and J. Capps ("Defendants"), and to deliver the summonses to the United States Marshal for service of process pursuant to Rule 4 of the Federal Rules of Civil Procedure, along with a copy of the complaint, Plaintiff's answers to the supplemental questionnaire, and the Report.

The United States Marshal **shall serve** the summonses on Defendants, along with a copy of the complaint, Plaintiff's answers to the supplemental questionnaire, and the Report, and file a return of service in the case pursuant to Rule 4(c) of the Federal Rules of Civil Procedure.

**It is so ordered** this 18th day of June, 2009.

  
Sam A. Lindsay  
United States District Judge